

AMENDED IN ASSEMBLY APRIL 16, 2012

AMENDED IN SENATE JUNE 13, 2011

**SENATE BILL**

**No. 807**

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**Introduced by Senators Correa and Lieu**

February 18, 2011

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~~An act to amend Section 20636 of the Government Code, relating to retirement, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 142, 148, 161, 162, 164.1, and 166 of, to add Section 141.5 to, and to repeal Section 167 of, the Military and Veterans Code, relating to the state militia.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 807, as amended, Correa. ~~Retirement: compensation earnable: State militia.~~

*Existing law provides that the Governor is the Commander in Chief of the Militia of the State. Existing law authorizes the Governor to order the active militia or any portion of the militia to perform military duty of every description, as described.*

*This bill would specify that the state active duty force consists of service members in active state service when ordered by the Governor. This bill would specify and revise conditions for state active duty for service members, as provided, and would authorize the Adjutant General to promulgate regulations in conformity with these provisions.*

*Existing law authorizes the Governor to make rules and regulations in conformity with the Military and Veterans Code that conform as nearly as practicable to those governing the United States Army, United States Air Force, and United States Navy.*

*This bill would instead require the Governor to direct the Adjutant General to make those rules and regulations.*

*Existing law specifies the membership of the office of the Adjutant General, including one officer who may be of the rank of brigadier general who is the Assistant Adjutant General. Existing law specifies that the Assistant Adjutant General is subordinate only to the Governor and the Adjutant General, and specifies 2 officers who may be of the rank of brigadier general, one of whom is the Deputy Adjutant General, Army Division and the other who is the Deputy Adjutant General, Air Division.*

*This bill would revise the ranks of officers in that office, by providing instead for one officer who may be of the rank of brigadier general who is the Deputy Adjutant General, and would require his or her duties to be assigned by the Adjutant General. This bill would, with regard to the Deputies Adjutant General, described above, provide for 2 officers who may be of the rank of brigadier general, one who is the Assistant Adjutant General, Army Division and the other who is the Assistant Adjutant General, Air Division. This bill would also specify one officer who is the Chief of Staff and Director of the Joint Staff.*

*Existing law requires the Governor to appoint the Adjutant General. Existing law provides that the Adjutant General receives the same pay and allowances as received by a lieutenant general in the Army of the United States.*

*This bill would require the Governor to appoint the Adjutant General on state active duty in the grade of lieutenant general, and would make conforming changes to that provision relating to the pay and benefits of the Adjutant General.*

*Under existing law, in the event of the absence of the Adjutant General or of his inability to perform his duties, the officer designated by the Adjutant General or the senior officer in the Adjutant General's office performs those duties.*

*This bill would instead specify that those duties are to be performed by the Deputy Adjutant General or other officer designated by the Adjutant General.*

~~The Public Employees' Retirement Law (PERL) establishes the Public Employees' Retirement System, which is administered by its board of administration, and which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines compensation earnable, for purposes of calculating a member's retirement allowance, as the member's payrate and special compensation. PERL specifically excludes from payrate and special compensation for state members any compensation for additional~~

services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles, and bonuses for duties performed after the member's regular work shift.

~~This bill would additionally exclude from payrate and special compensation for state members any allowance for travel expenses or housing.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. *The Legislature hereby finds and declares all of*  
2     *the following:*

3     (a) *The full-time state militia provides California with a*  
4     *well-trained state military force that plays an integral role in the*  
5     *state's emergency management system. The Governor, as*  
6     *Commander in Chief, commands all state military forces through*  
7     *the Adjutant General. California law requires the Adjutant General*  
8     *to command the state military for civil support, the California*  
9     *Cadet Corps, Youth Programs, and Funeral Honors Programs.*  
10    *In addition, the Adjutant General commands state military forces*  
11    *in military civil support when the public's safety is jeopardized*  
12    *because of manmade or natural disasters. The full-time state*  
13    *military force provides California with military capabilities used*  
14    *to prepare for, respond to, and recover from the effects of*  
15    *emergencies regardless of cause, size, location, or complexity.*  
16    *The state militia is comprised of federally trained California*  
17    *National Guard and experienced State Military Reserve service*  
18    *members who are capable of immediately employing resources to*  
19    *save lives, prevent human suffering, or mitigate great property*  
20    *damage within the State of California.*

21    (b) *State active duty plays an important role in the national*  
22    *response framework. Under the 10th Amendment to the United*  
23    *States Constitution, national emergency response frameworks*  
24    *recognize that state forces have primary responsibility for*  
25    *providing military support to state and local authorities in*  
26    *emergencies. National Guard civil support refers to support*  
27    *provided to civil authorities for domestic emergencies and for*

1 *designated law enforcement and other duties by the National Guard*  
2 *while in state active duty or while having the status described in*  
3 *Title 32 of the United States Code. State active duty military forces*  
4 *and National Guard forces conduct all missions in accordance*  
5 *with the needs of the state and within the guidelines of state laws.*  
6 *Because the National Guard continuously builds relationships*  
7 *with its civilian counterparts, when National Guard forces arrive*  
8 *to support an incident response, they usually integrate with first*  
9 *responders very quickly.*

10 *SEC. 2. Section 141.5 is added to the Military and Veterans*  
11 *Code, to read:*

12 *141.5. The state active duty force consists of service members*  
13 *in active state military service when ordered by the Governor in*  
14 *accordance with this code.*

15 *SEC. 3. Section 142 of the Military and Veterans Code is*  
16 *amended to read:*

17 *142. (a) The Governor may order the active militia or any*  
18 *portion thereof of it to perform military duty of every description,*  
19 *including necessary administrative duties, and to participate in*  
20 *small arms gunnery competitions in this State state or in any other*  
21 *state or territory or the District of Columbia, or in any fort, camp,*  
22 *or reservation of the United States. He or she may also authorize*  
23 *the performance of military duty or participation in small arms or*  
24 *gunnery competitions by any part of the active militia anywhere*  
25 *without the State state or without the United States. Cruise duty*  
26 *ordered for the Naval Militia may be required to be performed on*  
27 *United States vessels.*

28 *(b) An order to state active duty under this section for*  
29 *assignments of less than six years shall be based on using the most*  
30 *qualified service member for the assignment. A service member's*  
31 *orders shall expire annually unless renewed or the service member*  
32 *is separated for cause.*

33 *(c) A service member ordered to state active duty in accordance*  
34 *with this section who remains on state active duty for a cumulative*  
35 *total of six years shall be eligible for the career state active duty*  
36 *system and may remain on state active duty until the service*  
37 *member reaches 60 years of age or is separated for cause. At 60*  
38 *years of age, a service member's orders shall be temporary and*  
39 *may be renewed annually.*

(d) When a service member reaches 64 years of age, or when federal recognition of his or her grade or rank is withdrawn, whichever occurs later, the service member shall be retired from state active duty.

(e) A new service member ordered to state active duty on or after January 1, 2013, with the Military Department pursuant to this section shall be a current member of the California National Guard, retired or otherwise honorably separated from federal active military or California National Guard service with current membership in the State Military Reserve, or be a current member of the State Military Reserve with a minimum of two years of state service. Service members on state active duty who retire federally from the California National Guard shall be automatically assessed into the State Military Reserve.

(f) A commissioned officer on state active duty assigned to a general officer position who, previous to that duty, held a state active duty position at a lower grade may revert to the grade last held upon vacation of the general officer position, if a position is available.

(g) Notwithstanding any other law, a service member who is on state active duty may be relieved from state active duty if the Adjutant General, acting in good faith and on behalf of the Governor, abolishes a position and assigns duties elsewhere.

(h) The Adjutant General, under the authority of the Governor as Commander in Chief, shall promulgate regulations in conformity with this section.

SEC. 4. Section 148 of the Military and Veterans Code is amended to read:

148. The Governor ~~may~~ shall direct the Adjutant General to make rules and regulations in conformity with this code which shall conform as nearly as practicable to those governing the United States Army, United States Air Force, and United States Navy. ~~Such~~ The rules and regulations shall have the same force and effect as the provisions of this code.

A finding by the Governor that it is impracticable to conform rules and regulations to those governing the United States Army, United States Air Force, or United States Navy shall be conclusive and ~~such~~ the rules and regulations shall have force and effect over inconsistent rules, regulations, directives, manuals, or practices

1 governing any of the ~~armed forces~~ *Armed Forces* of the United  
2 States.

3 *SEC. 5. Section 161 of the Military and Veterans Code is*  
4 *amended to read:*

5 161. ~~The~~ *Within the Military Department, the office of the*  
6 *Adjutant General consists of one officer of the rank of lieutenant*  
7 *general who is the Adjutant General, one officer of the rank of*  
8 *brigadier general who is the* ~~Assistant~~ *Deputy Adjutant General,*  
9 *one officer who may be of the rank of brigadier general who is the*  
10 ~~Deputy Assistant~~ *Adjutant General, Army Division, one officer*  
11 *who may be of the rank of brigadier general who is the* ~~Deputy~~  
12 ~~Assistant~~ *Adjutant General, Air Division, one officer who may be*  
13 *of the rank of brigadier general who is the* ~~Deputy Adjutant~~  
14 ~~General, Joint Staff Division~~ *Chief of Staff and Director of the*  
15 *Joint Staff, and other officers as are prescribed by the laws or*  
16 *regulations of the United States. No person is eligible for*  
17 *appointment as the* ~~Assistant~~ *Deputy Adjutant General unless he*  
18 *or she had not less than a total of five* ~~(5)~~ *years of commissioned*  
19 *service in the National Guard of the United States, of which at*  
20 *least three* ~~(3)~~ *years shall be service as a field grade officer in the*  
21 *California National Guard within the preceding 10-year period*  
22 *prior to the date of appointment and of which at least three* ~~(3)~~  
23 *years shall have been in command of* ~~Army~~ *army or air troops at*  
24 *the battalion or equivalent or higher command level or three* ~~(3)~~  
25 *years as a staff officer at brigade or equivalent or higher staff level.*  
26 ~~The Assistant~~ *Deputy Adjutant General is subordinate only to the*  
27 *Governor and the Adjutant General and shall have his or her duties*  
28 *assigned by the Adjutant General.*

29 *SEC. 6. Section 162 of the Military and Veterans Code is*  
30 *amended to read:*

31 ~~162. The Adjutant General shall be appointed by the Governor~~  
32 ~~with the advice and consent of the Senate, and shall hold office at~~  
33 ~~the pleasure of the Governor, or until his successor is appointed~~  
34 ~~and has qualified.~~

35 162. *The Governor, as Commander in Chief, shall appoint the*  
36 *Adjutant General, who shall be on state active duty, in the grade*  
37 *of lieutenant general, with the advice and consent of the Senate,*  
38 *and that person shall hold office at the pleasure of the Governor,*  
39 *or until his or her successor is appointed and has qualified. No*  
40 *person is eligible for appointment as Adjutant General unless he*

1 *or she* had not less than a total of ~~ten (10)~~ 10 years of  
2 commissioned service in the National Guard of the United States,  
3 of which at least four ~~(4)~~ years shall be service as a field grade  
4 officer in the California National Guard within the preceding  
5 10-year period prior to the date of appointment and of which at  
6 least four ~~(4)~~ years shall have been in command of army or air  
7 troops at the battalion or equivalent or higher command level or  
8 four ~~(4)~~ years as a staff officer at brigade or equivalent or higher  
9 staff level.

10 *SEC. 7. Section 164.1 of the Military and Veterans Code is*  
11 *amended to read:*

12 164.1. The Adjutant General shall ~~be paid the same pay and~~  
13 ~~allowances as is received by~~ *receive the same pay and benefits*  
14 *pursuant to Section 320 as a lieutenant general in the Army of the*  
15 *United States and shall be paid in the same manner and at the same*  
16 *time as other state officers.*

17 *SEC. 8. Section 166 of the Military and Veterans Code is*  
18 *amended to read:*

19 166. In the event of the absence of ~~The the~~ Adjutant General  
20 or of his *or her* inability to perform his *or her* duties, the ~~officer~~  
21 *Deputy Adjutant General or other officer* designated by ~~The the~~  
22 Adjutant General ~~or the senior officer in The Adjutant General's~~  
23 ~~office~~ shall perform the duties of ~~The the~~ Adjutant General. In the  
24 event of the absence or inability of ~~such those~~ officers, the  
25 Governor may detail a National Guard officer to perform ~~such~~  
26 *those* duties.

27 *SEC. 9. Section 167 of the Military and Veterans Code is*  
28 *repealed.*

29 167. ~~(a) All commissioned and warrant officers and enlisted~~  
30 ~~personnel on permanent active duty with the Office of the Adjutant~~  
31 ~~General shall be appointed by the Governor, with consideration~~  
32 ~~of the recommendation of the Adjutant General and, except for~~  
33 ~~the Adjutant General, the Assistant Adjutant General, and officers~~  
34 ~~assigned to general officer positions, may remain on active duty~~  
35 ~~with the office either until age 60 or until federal recognition of~~  
36 ~~grade or rank as a member of the California National Guard is~~  
37 ~~withdrawn, whichever occurs later.~~

38 ~~(b) If the commission of an officer on active duty with the office~~  
39 ~~is vacated pursuant to Section 232, if a warrant officer on active~~  
40 ~~duty with the office is discharged pursuant to Section 225, or if an~~

1 enlisted person on active duty with the office is discharged under  
2 proper authority, the provisions of subdivision (a) regarding  
3 retention until age 60 do not apply.

4 (e) A commissioned officer on active duty with the office  
5 assigned to a general officer position who, previous to that duty,  
6 held a permanent active duty position in the office at a lower grade  
7 may revert to the permanent grade last held upon vacation of the  
8 general officer position.

9 SECTION 1. Section 20636 of the Government Code is  
10 amended to read:

11 20636. (a) "Compensation earnable" by a member means the  
12 payrate and special compensation of the member, as defined by  
13 subdivisions (b), (c), and (g), and as limited by Section 21752.5.

14 (b) (1) "Payrate" means the normal monthly rate of pay or base  
15 pay of the member paid in cash to similarly situated members of  
16 the same group or class of employment for services rendered on  
17 a full-time basis during normal working hours, pursuant to publicly  
18 available pay schedules. "Payrate," for a member who is not in a  
19 group or class, means the monthly rate of pay or base pay of the  
20 member, paid in cash and pursuant to publicly available pay  
21 schedules, for services rendered on a full-time basis during normal  
22 working hours, subject to the limitations of paragraph (2) of  
23 subdivision (e).

24 (2) "Payrate" shall include an amount deducted from a member's  
25 salary for any of the following:

26 (A) Participation in a deferred compensation plan.

27 (B) Payment for participation in a retirement plan that meets  
28 the requirements of Section 401(k) of Title 26 of the United States  
29 Code.

30 (C) Payment into a money purchase pension plan and trust that  
31 meets the requirements of Section 401(a) of Title 26 of the United  
32 States Code.

33 (D) Participation in a flexible benefits program.

34 (3) The computation for a leave without pay of a member shall  
35 be based on the compensation earnable by him or her at the  
36 beginning of the absence.

37 (4) The computation for time prior to entering state service shall  
38 be based on the compensation earnable by him or her in the position  
39 first held by him or her in state service.



1     ~~(e) (1) Special compensation of a member includes a payment~~  
2 ~~received for special skills, knowledge, abilities, work assignment,~~  
3 ~~workdays or hours, or other work conditions.~~

4     ~~(2) Special compensation shall be limited to that which is~~  
5 ~~received by a member pursuant to a labor policy or agreement or~~  
6 ~~as otherwise required by state or federal law, to similarly situated~~  
7 ~~members of a group or class of employment that is in addition to~~  
8 ~~payrate. If an individual is not part of a group or class, special~~  
9 ~~compensation shall be limited to that which the board determines~~  
10 ~~is received by similarly situated members in the closest related~~  
11 ~~group or class that is in addition to payrate, subject to the~~  
12 ~~limitations of paragraph (2) of subdivision (e).~~

13     ~~(3) Special compensation shall be for services rendered during~~  
14 ~~normal working hours and, when reported to the board, the~~  
15 ~~employer shall identify the pay period in which the special~~  
16 ~~compensation was earned.~~

17     ~~(4) Special compensation may include the full monetary value~~  
18 ~~of normal contributions paid to the board by the employer, on~~  
19 ~~behalf of the member and pursuant to Section 20691, if the~~  
20 ~~employer's labor policy or agreement specifically provides for the~~  
21 ~~inclusion of the normal contribution payment in compensation~~  
22 ~~earnable.~~

23     ~~(5) The monetary value of a service or noncash advantage~~  
24 ~~furnished by the employer to the member, except as expressly and~~  
25 ~~specifically provided in this part, is not special compensation unless~~  
26 ~~regulations promulgated by the board specifically determine that~~  
27 ~~value to be "special compensation."~~

28     ~~(6) The board shall promulgate regulations that delineate more~~  
29 ~~specifically and exclusively what constitutes "special~~  
30 ~~compensation" as used in this section. A uniform allowance, the~~  
31 ~~monetary value of employer-provided uniforms, holiday pay, and~~  
32 ~~premium pay for hours worked within the normally scheduled or~~  
33 ~~regular working hours that are in excess of the statutory maximum~~  
34 ~~workweek or work period applicable to the employee under Section~~  
35 ~~201 et seq. of Title 29 of the United States Code shall be included~~  
36 ~~as special compensation and appropriately defined in those~~  
37 ~~regulations.~~

38     ~~(7) Special compensation does not include any of the following:~~

39     ~~(A) Final settlement pay.~~

~~(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.~~

~~(C) Other payments the board has not affirmatively determined to be special compensation.~~

~~(d) Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.~~

~~(e) (1) As used in this part, “group or class of employment” means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work-related grouping. One employee may not be considered a group or class.~~

~~(2) Increases in compensation earnable granted to an employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.~~

~~(f) As used in this part, “final settlement pay” means pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with, or in anticipation of, a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay.~~

~~(g) (1) Notwithstanding subdivision (a), “compensation earnable” for state members means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. The computation for an absence of a member shall be based on the compensation earnable by him or her at the beginning of the absence and for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in that state service.~~

~~(2) Notwithstanding subdivision (b), “payrate” for state members means the average monthly remuneration paid in cash out of funds~~

1 paid by the employer to similarly situated members of the same  
2 group or class of employment, in payment for the member's  
3 services or for time during which the member is excused from  
4 work because of holidays, sick leave, vacation, compensating time  
5 off, or leave of absence. "Payrate" for state members shall include:

6 (A) An amount deducted from a member's salary for any of the  
7 following:

8 (i) Participation in a deferred compensation plan established  
9 pursuant to Chapter 4 (commencing with Section 19993) of Part  
10 2.6.

11 (ii) Payment for participation in a retirement plan that meets  
12 the requirements of Section 401(k) of Title 26 of the United States  
13 Code.

14 (iii) Payment into a money purchase pension plan and trust that  
15 meets the requirements of Section 401(a) of Title 26 of the United  
16 States Code.

17 (iv) Participation in a flexible benefits program.

18 (B) A payment in cash by the member's employer to one other  
19 than an employee for the purpose of purchasing an annuity contract  
20 for a member under an annuity plan that meets the requirements  
21 of Section 403(b) of Title 26 of the United States Code.

22 (C) Employer "pick up" of member contributions that meets  
23 the requirements of Section 414(h)(2) of Title 26 of the United  
24 States Code.

25 (D) Disability or workers' compensation payments to safety  
26 members in accordance with Section 4800 of the Labor Code.

27 (E) Temporary industrial disability payments pursuant to Article  
28 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

29 (F) Other payments the board may determine to be within  
30 "payrate."

31 (3) Notwithstanding subdivision (c), "special compensation"  
32 for state members shall mean all of the following:

33 (A) The monetary value, as determined by the board, of living  
34 quarters, board, lodging, fuel, laundry, and other advantages of  
35 any nature furnished to a member by his or her employer in  
36 payment for the member's services.

37 (B) Compensation for performing normally required duties,  
38 such as holiday pay, bonuses (for duties performed on regular work  
39 shift), educational incentive pay, maintenance and noncash  
40 payments, out-of-class pay, marksmanship pay, hazard pay,

~~1 motorecycle pay, paramedic pay, emergency medical technician  
2 pay, Peace Officer Standards and Training (POST) certificate pay,  
3 and split shift differential.~~

~~4 (C) Compensation for uniforms, except as provided in Section  
5 20632.~~

~~6 (D) Other payments the board may determine to be within  
7 “special compensation.”~~

~~8 (4) “Payrate” and “special compensation” for state members do  
9 not include any of the following:~~

~~10 (A) The provision by the state employer of a medical or hospital  
11 service or care plan or insurance plan for its employees (other than  
12 the purchase of annuity contracts as described below in this  
13 subdivision), a contribution by the employer to meet the premium  
14 or charge for that plan, or a payment into a private fund to provide  
15 health and welfare benefits for employees.~~

~~16 (B) A payment by the state employer of the employee portion  
17 of taxes imposed by the Federal Insurance Contribution Act.~~

~~18 (C) Amounts not available for payment of salaries and that are  
19 applied by the employer for the purchase of annuity contracts  
20 including those that meet the requirements of Section 403(b) of  
21 Title 26 of the United States Code.~~

~~22 (D) Benefits paid pursuant to Article 5 (commencing with  
23 Section 19878) of Chapter 2.5 of Part 2.6.~~

~~24 (E) Employer payments that are to be credited as employee  
25 contributions for benefits provided by this system, or employer  
26 payments that are to be credited to employee accounts in deferred  
27 compensation plans. The amounts deducted from a member’s  
28 wages for participation in a deferred compensation plan may not  
29 be considered to be “employer payments.”~~

~~30 (F) Payments for unused vacation, annual leave, personal leave,  
31 sick leave, or compensating time off, whether paid in lump sum  
32 or otherwise.~~

~~33 (G) Final settlement pay.~~

~~34 (H) Payments for overtime, including pay in lieu of vacation or  
35 holiday.~~

~~36 (I) Compensation for additional services outside regular duties,  
37 such as standby pay, callback pay, court duty, allowance for  
38 automobiles or any travel expenses, and bonuses for duties  
39 performed after the member’s regular work shift.~~

1     ~~(J) Amounts not available for payment of salaries and that are~~  
2     ~~applied by the employer for any of the following:~~

3     ~~(i) The purchase of a retirement plan that meets the requirements~~  
4     ~~of Section 401(k) of Title 26 of the United States Code.~~

5     ~~(ii) Payment into a money purchase pension plan and trust that~~  
6     ~~meets the requirements of Section 401(a) of Title 26 of the United~~  
7     ~~States Code.~~

8     ~~(K) Payments made by the employer to or on behalf of its~~  
9     ~~employees who have elected to be covered by a flexible benefits~~  
10    ~~program, where those payments reflect amounts that exceed the~~  
11    ~~employee's salary.~~

12    ~~(L) Any allowance for housing.~~

13    ~~(M) Other payments the board may determine are not "payrate"~~  
14    ~~or "special compensation."~~

15    ~~(5) If the provisions of this subdivision, including the board's~~  
16    ~~determinations pursuant to subparagraph (F) of paragraph (2) and~~  
17    ~~subparagraph (D) of paragraph (3), are in conflict with the~~  
18    ~~provisions of a memorandum of understanding reached pursuant~~  
19    ~~to Section 3517.5 or 3560, the memorandum of understanding~~  
20    ~~shall be controlling without further legislative action, except that~~  
21    ~~if the provisions of a memorandum of understanding require the~~  
22    ~~expenditure of funds, those provisions may not become effective~~  
23    ~~unless approved by the Legislature in the annual Budget Act. No~~  
24    ~~memorandum of understanding reached pursuant to Section 3517.5~~  
25    ~~or 3560 may exclude from the definition of either "payrate" or~~  
26    ~~"special compensation" a member's base salary payments or~~  
27    ~~payments for time during which the member is excused from work~~  
28    ~~because of holidays, sick leave, vacation, compensating time off,~~  
29    ~~or leave of absence. If items of compensation earnable are included~~  
30    ~~by memorandum of understanding as "payrate" or "special~~  
31    ~~compensation" for retirement purposes for represented and higher~~  
32    ~~education employees pursuant to this paragraph, the Department~~  
33    ~~of Personnel Administration or the Trustees of the California State~~  
34    ~~University shall obtain approval from the board for that inclusion.~~

35    ~~(6) (A) Subparagraph (B) of paragraph (3) prescribes that~~  
36    ~~compensation earnable includes compensation for performing~~  
37    ~~normally required duties, such as holiday pay, bonuses (for duties~~  
38    ~~performed on regular work shift), educational incentive pay,~~  
39    ~~maintenance and noncash payments, out-of-class pay,~~  
40    ~~marksmanship pay, hazard pay, motoreycle pay, paramedic pay,~~

1 emergency medical technician pay, POST certificate pay, and split  
2 shift differential; and includes compensation for uniforms, except  
3 as provided in Section 20632; and subparagraph (I) of paragraph  
4 (4) excludes from compensation earnable compensation for  
5 additional services outside regular duties, such as standby pay,  
6 callback pay, court duty, allowance for automobile, and bonuses  
7 for duties performed after regular work shift.

8 (B) Notwithstanding subparagraph (A), the Department of  
9 Personnel Administration shall determine which payments and  
10 allowances that are paid by the state employer shall be considered  
11 compensation for retirement purposes for an employee who either  
12 is excluded from the definition of state employee in Section 3513,  
13 or is a nonelected officer or employee of the executive branch of  
14 government who is not a member of the civil service.

15 (C) Notwithstanding subparagraph (A), the Trustees of the  
16 California State University shall determine which payments and  
17 allowances that are paid by the trustees shall be considered  
18 compensation for retirement purposes for a managerial employee,  
19 as defined in Section 3562, or supervisory employee as defined in  
20 Section 3580.3.

21 SEC. 2. This act is an urgency statute necessary for the  
22 immediate preservation of the public peace, health, or safety within  
23 the meaning of Article IV of the Constitution and shall go into  
24 immediate effect. The facts constituting the necessity are:

25 Travel and housing allowances have been improperly included  
26 as compensation in calculating the retirement benefits for certain  
27 state employees, resulting in increased benefit payments for those  
28 employees. Due to the state's severe fiscal crisis, and the fiduciary  
29 responsibility to taxpayers, it is imperative to eliminate these  
30 inflated retirement benefits at the earliest possible time.